IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1246 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAK TEXTILES - Appellant(s)
Versus
SHAH PARSHOTTAMDAS GHELABHAI & 2 - Defendant(s)

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Appearance :
MR RK MISHRA for Appellant(s) : 1,
MR MB GANDHI for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant herein-original plaintiff (hereinafter referred to as “the plaintiff”) has challenged the judgment and

decree passed by the learned City Civil Juddge, Court No.8, Ahmedabad, passed in Civil Suit No.1772 of 1983, whereby the said suit was dismissed.

2. The plaintiff filed Civil Suit No.1772 of 1983 in the City Civil Court, Ahmedabad, against the first respondent-original defendant No.1 (hereinafter referred to as “the defendant No.1) and its partners, for recovering the sum of Rs.15,500/- which include the principal amount being balance of the price for the goods sold and delivered to the defendants of Rs.10,438.85 ps and the interest due thereon till the date of the suit amounting to Rs.5,041-15 ps and notice charges of Rs.20/- with further running interest on the total dues at the rate of 12 % per annum from the date of the suit till realisation.

3. It was averred in the suit that the plaintiff has sold goods worth Rs.30,438.85 ps to the defendants under Bill No.402 on 13-5-80 and the goods were delivered to the defendants as per delivery slip issued and signed by the

defendants. It was further averred that towards the aforesaid dues, the defendants paid a sum of Rs.20,000/- on 22-12-80 by a cheque and as such by deducting that amount the balance due from the defendants stood at Rs.10,438.85, which the plaintiff claimed from the defendants in the suit as outstanding price of the goods sold and delivered to the defendants. It was averred in the plaint that as the said amount was not paid, the plaintiff served a notice upon the defendants which was not replied, and therefore, the aforesaid suit came to be filed claiming sum of Rs.15,500/- from the defendants.

4. The defendants initially filed leave to defend affidavit at the stage when the suit was set down for hearing the summons for judgment being a Summary Suit at Exh.25. The said affidavit by purshis Exh.31 was adopted as written statement to the plaint. It was contended on behalf of the defendants that there was no contract with regard to the goods in question between the plaintiff and the defendants and it was the contention on behalf of the defendants

that as such the goods were given on 'Jangad' basis to sell the same for and on behalf of the plaintiff as the goods-clothes were of Calico Mills and that the dealership of the plaintiff to sell goods of Calico Mills was cancelled. It was further submitted that whatever the goods were sold and the amount realized, the same was to be paid to the plaintiff and accordingly on realisation of the amount on selling the goods, Rs.20,000/- was reimbursed to the plaintiff.

5. The learned City Civil Court raised issues at Exh. 34. The plaintiff examined its mananger Gulabchand Savatmal at Exh.38. The defendants examined defendant No.2 at Exh.50. The documentary evidence of the plaintiff consisted of Exh.45, the copy of the notice dated 18-9-82 issued to the defendants, Exh.46, its Registered A.D. Slip, Exh.40, the original Khatavahi of plaintiff for the year 1979-80, Exh.39, the original Udharvahi of plaintiff for the year 1979-80, Exh.41, the original Rokadmal of the year 1980-81 of the plaintiff, Exh.42, the original Khatavahi of plaintiff for the year

1980-81, Exh.43, the original Khatavahi of the plaintiff for the year 1981-82 and Exh.44, the original Khatavahi of the plaintiff for the year 1982-83. The documentary evidence of the defendants consisted of Exh.51 and 52, the Mill Rivaj extract and Exh.53, the Jamavahi of the defendant-firm for toe year 1980 showng the entry dated 6-12-80 in the plaintiff's account in the defendants' account books.

6. On the basis of the evidence on record and considering the fact that the original delivery slip was not produced and duplicate of the bill was produced, the learned trial Court dismissed the suit holding that the goods were given to the defendants by way of 'Jangad' and not by way of sale and/or the plaintiff has failed to prove that the goods were in fact sold to the defendants. The learned trial court further held that the plaintiff has failed to prove entry in their account books and accordingly dismissed the suit.

7. Being aggrieved by and dissatisfied with the judgment and decree passed by the learned City

Civil Court dismissing the Civil Suit No.1772 of 1983, the plaintiff has preferred the present appeal.

8. Shri M.B.Rana, the learned advocate appearing on behalf of the plaintiff has vehemently submitted that the learned trial Court has materially erred in holding that the goods were given to the defendants by way of 'Jangad' and there was no sale transaction in favour of the defendants. He has further submitted that in the books of accounts of the plaintiff it was specifically mentioned that as per the general practice the goods were sold to the defendants and there was no entry in their books of account that the transaction was not a 'Jangad' transaction, the learned trial Court has materially erred in holding that the transaction was 'Jangad' transaction and has committed an error in dismissing the suit. Therefore, it is requested to allow the present appeal.

9. Shri Chinmay Gandhi, the learned advocate appearing for the defendants while supporting the judgment and decree of the learned trial

Court has submitted that inspite of the fact that the transaction with regard to sale was disputed by the defendants and it was the contention on behalf of the defendants that it was 'Jangad' transaction, the plaintiff did not produce the original delivery slip. It is submitted that if the original delivery slip could have been produced, in that case, it would have been proved that whether the transaction was a 'Jangad' transaction or not. It is further submitted by him that even it was admitted in the cross-examination of the witness on behalf of the plaintiff that the delivery slip of the plaintiff to sell goods of Calico Mills was canceled which has proved the contention on behalf of the defendants that as the dealership of the plaintiff to sell the goods of Calico Mills was canceled, it was not possible for the plaintiff to sell the goods of Calico Mills, and therefore, it was given to the defendants for selling the same for and on behalf of the plaintiff. It is further submitted in that in absence of the delivery slip and non-production

of the original bills, the learned trial Court has rightly dismissed the suit, and therefore, it is requested to dismiss the present appeal.

10. Heard the learned advocates appearing on behalf of the parties. It is the contention on behalf of the plaintiff that the transaction was a sale transaction and the goods-clothes were sold to the defendants worth Rs.30,438-85 ps and only Rs.20,000/- was paid, and therefore, the plaintiff was entitled to recover Rs.10,438.85 along with interest. It is required to be noted that from the very beginning it was the contention on behalf of the defendants that the transaction was not a sale transaction, but it was a 'Jangad' transaction and the goods were given to the defendants to sell it for and on behalf of the plaintiff as it was not possible for the plaintiff to sell the goods of Calico Mills as its dealership was canceled. It was also the contention of the defendants that whatever amount was realized by selling the goods, the same were reimbursed to the plaintiff. Inspite of the aforesaid contention

on behalf of the defendants, the plaintiff never produced the delivery slip. Even the original bill was also not produced. The plaintiff only relied upon the entry in their books of account. But it appears from the record and evidence that the said entry in their account books is not substantiated by other corroborative evidence. Under the circumstances, in absence of any delivery slip by which it can be ascertained whether the transaction in question was a sale transaction or 'Jangad' transaction and even it is admitted in the cross-examination by the witness on behalf of the plaintiff that the dealership of the plaintiff to sell the goods of Calico Mills was canceled, it was not possible for them to sell the goods of Calico Mills, the case on behalf of the defendants to that effect has been proved. Under the circumstances, the trial Court has not committed any error in dismissing the suit. This Court is in complete agreement with the reasoning and findings of the trial Court while dismissing the suit.

11. For the reasons stated above, the appeal fails and is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(**M.R.SHAH, J.)**

*mithabhai